

PART 19

SMALL BUSINESS PROGRAMS*

19.001 Definitions.

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“Labor surplus area” means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

“Labor surplus area concern” means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

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“Women-owned small business concern” means a small business concern—

(a) Which is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more women. [FAC 90-32]

19.102 Size standards.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
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(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—	(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—
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—(3) If the acquisition is subject to and is actually procured under “small purchase procedures”, such nonmanufacturer may furnish any domestically produced or manufactured product.	(3) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.
(4) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.	(4) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—* * * * *
(5) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific	

* NOTE: Heading changed from “Small Business and Small Disadvantaged Business Concerns”

product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—

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(6) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(7) Requests for waivers shall be sent to the Chairman of the Associate Administrator for Procurement Assistance, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW, Washington, DC 20416.

(5) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(6) Requests for waivers shall be sent to the Chairman of the Associate Administrator for Procurement Assistance, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW, Washington, DC 20416. [FAC 90-29]

19.201 General policy.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) It is the policy of the Government to place a fair proportion of its acquisitions, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems, with small business concerns and small disadvantaged business concerns. Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.</p> <p>(b) Heads of contracting activities are responsible for effectively implementing the Small Business and Small Disadvantaged Business Utilization Programs within their activities, including achieving program</p>	<p>(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business concerns, small disadvantaged business concerns, and women-owned small business concerns. Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business. [FAC 90-32]</p> <p>(b) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that</p>

goals. They are to ensure that contracting and technical personnel maintain knowledge of small-~~and~~ small disadvantaged business program requirements and take all reasonable action to increase ~~small business~~ participation in their activities' contracting processes.

(c) * * * * *

(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside ~~(including those involving Labor Surplus Areas),~~ under Subpart 19.8 as a section 8(a) award, ~~or under a procedure authorized by section 1207 of Pub. L. 99-661, if applicable.~~

(d) ~~Small and Disadvantaged Business Utilization~~ Specialists shall be appointed and act in accord with agency regulations.

contracting and technical personnel maintain knowledge of small, small disadvantaged, **and women-owned small** business program requirements and take all reasonable action to increase participation in their activities' contracting processes **by these businesses.** [FAC 90-32]

(c) * * * * *

(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside, **or** under Subpart 19.8 as a Section 8(a) award. [FAC 90-32]

(d) **Small Business Specialists** shall be appointed and act in accordance with agency regulations. [FAC 90-32]

19.202 Specific policies.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed below and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subparts 19.5, 19.8, or under a procedure authorized by sec. 1207 of Pub. L. 99-661. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.	In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subpart 19.5 or 19.8. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted. [FAC 90-32]

19.202-3 Equal low bids.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
In the event of equal low bids, awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.	In the event of equal low bids (see 14.408-6), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns. [FAC 90-32]

19.202-5 Data collection and reporting requirements.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions: (a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business concern , or women-owned small business (see the provisions at 52.219-1, Small Business Concern Representation, 52.219-2, Small Disadvantaged Business Concern Representation, and 52.219-3, Women-Owned Small Business Representation).	Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions: (a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business, or women-owned small business (see the provision at 52.219-1, Small Business Program Representations).
(b) Accurately measure the extent of participation by small business concerns , small disadvantaged business concerns , and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed with small business concerns during each fiscal year, and report data to the SBA at the end of each fiscal year (see Sbpt 4.6).	(b) Accurately measure the extent of participation by small, small disadvantaged, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see Subpart 4.6). [FAC 90-32]

19.301 Representation by the offeror.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>* * * * *</p> <p>(d) If the SBA determines that the status of a concern as a "small business" or a "small disadvantaged business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in section 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 124.6.</p>	<p>* * * * *</p> <p>(d) If the SBA determines that the status of a concern as a "small business", a "small disadvantaged business" or a "women-owned small business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in section 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 124.6. [FAC 90-32]</p>

19.303 Determining product or service classifications.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(a) The contracting officer shall determine the	(a) The contracting officer shall determine the

appropriate standard industrial classification code and related small business size standard and include them in solicitations, ~~except when small purchase procedures are used.~~

appropriate standard industrial classification code and related small business size standard and include them in solicitations **above the micro-purchase threshold in 13.101.** [FAC 90-29]

19.304 Solicitation provisions and contract clause.

FAR as of FAC 90-25

(a) The contracting officer shall insert the provision at 52.219-1, Small Business ~~Concern~~ Representation, in solicitations when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

~~—(b) The contracting officer shall insert the provision at 52.219-2, Small Disadvantaged Business Concern Representation, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.~~

~~—(c) The contracting officer shall insert the provision at 52.219-3, Women-Owned Small Business Representation, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.~~

~~—(d) The contracting officer shall insert the provision at 52.219-22, SIC Code and Small Business Size Standard, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.~~

FAR as revised

(a) The contracting officer shall insert the provision at 52.219-1, Small Business **Program** Representations, in solicitations **exceeding the micro-purchase threshold** when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) When contracting by sealed bidding, the contracting officer shall insert the provision at 52.219-2, Equal Low Bids, in solicitations and contracts when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. [FAC 90-32]

19.401 General.

FAR as of FAC 90-25

(a) The Small Business Act is the authority under which the Small Business Administration (SBA) and agencies consult and cooperate with each other in formulating policies to ensure that small business ~~and small disadvantaged business~~ interests will be recognized and protected.

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FAR as revised

(a) The Small Business Act is the authority under which the Small Business Administration (SBA) and agencies consult and cooperate with each other in formulating policies to ensure that small business interests will be recognized and protected.

[FAC 90-32]

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19.402 Small Business Administration procurement center representatives.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>*****</p> <p>(c) The duties assigned by SBA to its procurement center representatives include the following:</p> <p>(1) Reviewing proposed acquisitions to recommend (i) the setting aside of selected acquisitions not unilaterally set aside by the contracting officer, (ii) new qualified small and small disadvantaged business sources, and (iii) breakout of components for competitive acquisitions.</p> <p>*****</p>	<p>*****</p> <p>(c) The duties assigned by SBA to its procurement center representatives include the following:</p> <p>(1) Reviewing proposed acquisitions to recommend (i) the setting aside of selected acquisitions not unilaterally set aside by the contracting officer, (ii) new qualified small, small disadvantaged and women-owned small business sources, and (iii) breakout of components for competitive acquisitions. [FAC 90-32]</p> <p>*****</p>

19.501 General.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses or, except for the Department of Defense, restricted to small businesses located in labor surplus areas. A set-aside of a single acquisition or a class of acquisitions may be total or partial.</p> <p>*****</p> <p>(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small and disadvantaged business utilization program and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs. In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides will be considered for small business set-asides in accordance with 19.502-2(a). If necessary, the screening for set-asides will be accomplished before entering such requirements into the system.</p>	<p>(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses. A set-aside of a single acquisition or a class of acquisitions may be total or partial. [FAC 90-32]</p> <p>*****</p> <p>(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small and disadvantaged business utilization program and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs. [FAC 90-29]</p>

(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the ~~small purchase limitation in 13.000~~ that have not been unilaterally set aside for small business.

(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.

~~(f)(1) Consistent with the requirements of Pub. L. 95-507, a special category of set-asides, identified as small business-small purchase set-asides, has been established for acquisitions of supplies or services that have an anticipated dollar value of \$25,000 or less and are subject to small purchase procedures (see 13.105 and 19.508).~~

~~—(2) A small nonmanufacturer responding to a small business-small purchase set-aside may furnish any domestically produced or manufactured product.~~

~~—(g) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall, if required by agency regulations, be acquired on the basis of a repetitive set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (2) awards will be made at fair market prices. Withdrawal of a repetitive set-aside will be in accordance with 19.506.~~

(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the **micro-purchase threshold in 13.101** that have not been unilaterally set aside for small business.

(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer. [FAC 90-29]

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19.502-1 Requirements for setting aside acquisitions.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
Using the order of precedence in 19.504, the contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist.	Using the order of precedence in 19.504, the contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist. This requirement

does not apply to purchases of \$2,500 or less, purchases from required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts), or orders under Federal Information Processing (FIP) Multiple Award Schedule contracts. [FAC 90-29]

19.502-2 Total set-asides.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>—(a) The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction except small business-small purchase set-asides, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (b) of this subsection); and (2) awards will be made at fair market prices. Total set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules.</p> <p>—(b) In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(5)). This would permit small business regular dealers to provide any domestically produced product. In these cases, the contracting officer's determination in subparagraph (a)(1) of this subsection will be based on offers from at least two responsible small business regular dealers offering the products of different domestic concerns.</p>	<p>(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns, unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and with regard to the quality and delivery of the goods or services being purchased. This requirement does not preclude the award of a contract with a value not greater than \$100,000 under 19.8, Contracting with the Small Business Administration, or under 19.1006(c), Emerging small business set-aside.</p> <p>(b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) awards will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources</p>

consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For set-asides other than for construction or services, any concern proposing to furnish the product which it did not itself manufacture must furnish the product of a small business manufacturer unless the Small Business Administration has granted a waiver (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(4)). This would permit small business regular dealers to provide any firm's product. In these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set-aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small business regular dealers offering the products of different concerns.

(d) The requirements of this subsection do not apply to acquisitions over \$25,000 during the period when set-asides cannot be considered for the four designated industry groups (see 19.1006(b)). [FAC 90-29

19.502-3 Partial set-asides.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—</p> <p>* * * *</p> <p>(4) The acquisition is not subject to small purchase procedures; and</p>	<p>(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—</p> <p>* * * *</p> <p>(4) The acquisition is not subject to simplified acquisition procedures; and [FAC 90-29]</p>

19.502-4 Methods of conducting set-asides.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(a) Total and partial small business set-asides may be conducted by using sealed bids (see Part 14) or competitive proposals (see Part 15). (See Part 6 for competition requirements.) * * * *	(a) Total set-asides may be conducted by using simplified acquisition procedures (see Part 13) , sealed bids (see Part 14), or competitive proposals (see Part 15). Partial small business set-asides may be conducted by using sealed bids (see Part 14), or competitive proposals (see Part 15). (See Part 6 for competition requirements.) * * * * [FAC 90-29]

19.503 Setting aside a class of acquisitions.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * (b) The determination to set aside a class of acquisitions may be either unilateral or joint. (c) Each class set-aside determination shall be in writing and must— (1) Specifically identify the product(s) and service(s) it covers; (2) Provide that the set-aside does not apply to any acquisition accomplished using small purchase procedures; * * * *	* * * * (b) The determination to set aside a class of acquisitions may be either unilateral or joint. (c) Each class set-aside determination shall be in writing and must— (1) Specifically identify the product(s) and service(s) it covers; (2) Provide that the set-aside does not apply to any acquisition automatically reserved for small business concerns under 19.502-2(a); [FAC 90-29] * * * *

19.504 [Reserved] [FAC 90-32]

~~19.504 Set-aside program order of precedence.~~

- ~~—(a) In carrying out small business set-aside programs, contracting officers of agencies other than the Department of Defense (DOD) shall award contracts and encourage placement of subcontracts in the following order of precedence (see 15 U.S.C. 644(e) and (f) and Pub. L. 96-302):~~
- ~~—(1) A total set-aside for small business concerns located in labor surplus areas.~~
 - ~~—(2) A total set-aside for small business concerns.~~
 - ~~—(3) A partial set-aside for small business concerns located in labor surplus areas.~~
 - ~~—(4) A partial set-aside for small business concerns.~~
 - ~~—(5) Total labor surplus area set-aside for concerns that are not small businesses.~~
 - ~~—(b) Set-aside priorities of DOD are different from the above and are set forth in the DOD FAR Supplement.~~

19.505 Rejecting Small Business Administration recommendations.

FAR as of FAC 90-25

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 ~~business~~ days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 ~~business~~ days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 ~~business~~ days. Pending ~~issuing the~~ decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—

(1) Within 1 ~~business~~ day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) below); and

(2) The SBA shall be allowed 15 ~~business~~ days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.

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(e) The agency head shall reply to the SBA within 30 ~~business~~ days after receiving the appeal. The decision of the agency head shall be final.

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FAR as revised

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 **working** days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 **working** days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 **working** days. Pending **issuance of a** decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—

(1) Within 1 **working** day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

(2) The SBA shall be allowed 15 **working** days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.

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(e) The agency head shall reply to the SBA within 30 **working** days after receiving the appeal. The decision of the agency head shall be final.

* * * * * [FAC 90-32]

19.506 Withdrawing or modifying set-asides.

FAR as of FAC 90-25

(a) If, before award of a contract involving a set-aside ~~for small business~~, the contracting officer considers that award ~~to a small business concern~~ would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small ~~and disadvantaged~~ business utilization specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.

(b) If the agency small ~~and disadvantaged~~ business utilization representative does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small ~~and disadvantaged~~ business utilization representative and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of small business-small purchase set-asides (see 13.105).

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FAR as revised

(a) If, before award of a contract involving a set-aside, the contracting officer considers that award would be detrimental to the public interest, (e.g., payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.

(b) If the agency small business **specialist** does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small business **specialist** and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of set-asides **under \$100,000**. [FAC 90-32]

* * * * *

19.508 Solicitation provisions and contract clauses.

FAR as of FAC 90-25

a) The contracting officer shall insert the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside, in each written solicitation of quotations or offers to provide supplies and/or services when (1) the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands, (2) the contract amount is expected to be \$25,000 or less, and (3) the acquisition is subject to small purchase procedures; unless purchase on an unrestricted basis is appropriate, as specified in 13.105(d).

FAR as revised

(a) **[Reserved]** [FAC 90-29]

~~(b) (This paragraph (b) does not apply to DOD.) The contracting officer shall insert the clause at 52.219-5, Notice of Total Small Business Labor Surplus Area Set-Aside, in solicitations and contracts involving total small business labor surplus area set-asides (see 19.504(a)(1)). The clause at 52.219-5 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).~~

(c) * * * * The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with ~~19.502-2(b)~~.

(d) * * * * The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with ~~19.502-2(b)~~.

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8, except those awarded using ~~small purchase~~ procedures in Part 13.
* * * *

(b) **[Reserved]** [FAC 90-32]
* * * *

(c) * * * * The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with **19.502-2(c)**. [FAC 90-29]

(d) * * * * The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with **19.502-2(c)**. [FAC 90-29]

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8, except those awarded using **simplified acquisition** procedures in Part 13. [FAC 90-29]
* * * *

SUBPART 19.7—SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS

SUBPART 19.7—SUBCONTRACTING WITH SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS [FAC 90-32]

19.702 Statutory requirements.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>Any contractor receiving a contract for more than the small purchase limitation in 13.000 shall agree in the contract that small business concerns and small disadvantaged business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.</p> <p>* * * * *</p> <p>(b) Subcontracting plans (see subparagraphs (a)(1) and (2) of this section) are not required—</p> <p>* * * * *</p> <p>(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (or equivalent prior DAR, FPR, or NASA clauses); e.g., contracts awarded before Pub. L. 95-507 and which are within the scope of the contract.</p> <p>* * * * *</p>	<p>Any contractor receiving a contract for more than the simplified acquisition threshold in Part 13 shall agree in the contract that small business concerns, small disadvantaged business concerns and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small disadvantaged business concerns and women-owned small business concerns.</p> <p>* * * * *</p> <p>(b) Subcontracting plans (see subparagraphs (a)(1) and (2) of this section) are not required—</p> <p>* * * * *</p> <p>(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior clauses). [FAC 90-32]</p> <p>* * * * *</p>

19.703 Eligibility requirements for participating in the program.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern or small disadvantaged business concern.</p>	<p>(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern, small disadvantaged business concern or a woman-owned small business concern.</p>

(1) To represent itself as a small business concern, a concern must meet the definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status ~~as either a small business concern or a small disadvantaged business concern~~. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601-121.1608. Protests challenging a subcontractor's disadvantaged status representation shall be filed in accordance with 13 CFR 124.601-124.610.

(1) To represent itself as a small business concern **or a women-owned small business concern**, a concern must meet the appropriate definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601 **through** 121.1608. Protests challenging a subcontractor's disadvantaged status representation shall be filed in accordance with 13 CFR 124.601 **through** 124.610. **Protests challenging a subcontractor's status as a women-owned small business concern shall be filed in accordance with Small Business Administration procedures.** [FAC 90-32]

19.704 Subcontracting plan requirements.

FAR as of FAC 90-25

(a) Each subcontracting plan required under 19.702(a)(1) and (2) must include—

(1) Separate percentage goals for using small business concerns ~~and~~ small disadvantaged business concerns as subcontractors;

* * * * *

(3) A description of the efforts the offeror will make to ensure that small business concerns ~~and~~ small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small Business Concerns ~~and~~ Small Disadvantaged Business Concerns (see 19.708(b)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219-9, Small ~~Business and~~ Small Disadvantaged Business Subcontracting Plan (see 19.708(c));

* * * * *

FAR as revised

(a) Each subcontracting plan required under 19.702(a)(1) and (2) must include—

(1) Separate percentage goals for using small business concerns, small disadvantaged business concerns **and women-owned small business concerns** as subcontractors;]

* * * * *

(3) A description of the efforts the offeror will make to ensure that small business concerns, small disadvantaged business concerns **and women-owned small business concerns** will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small Business Concerns** (see 19.708(b)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219-9, Small, Small Disadvantaged **and Women-Owned Small Business Subcontracting Plan** (see 19.708(c)); * * * * *

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small and small disadvantaged business concerns and to award subcontracts to them.

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged **and women-owned small** business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219-9, Small ~~Business and Small Disadvantaged Business~~ Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

* * * * *

(b) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219-9, Small, Small Disadvantaged **and Women-Owned Small Business** Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

[FAC 90-32]

* * * * *

19.705 Responsibilities of the contracting officer under the subcontracting assistance program

19.705-1 General support of the program.

FAR as of FAC 90-25

The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award fee contracting (see the clause at 52.219-10, Incentive Subcontracting Program for ~~Small and Small Disadvantaged Business Concerns~~, and 19.708(c)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan.

FAR as revised

The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award fee contracting (see the clause at 52.219-10, Incentive Subcontracting Program, and 19.708(c)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan. [FAC 90-32]

19.705-2 Determining the need for a subcontracting plan.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The contracting officer shall take the following actions to determine whether a proposed contractual action requires a subcontracting plan:</p> <p>* * * * *</p> <p>(d) Due to their unique circumstances, major system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate negotiating subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns to participate and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (1) may require offerors to include proposed subcontracting plans in their initial proposals and (2) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.</p>	<p>The contracting officer shall take the following actions to determine whether a proposed contractual action requires a subcontracting plan:</p> <p>* * * * *</p> <p>(d) Due to their unique circumstances, major system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate negotiating subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small, small disadvantaged and women-owned small business concerns to participate and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (1) may require offerors to include proposed subcontracting plans in their initial proposals and (2) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals. [FAC 90-32]</p>

19.705-4 Reviewing the subcontracting plan.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>* * * * *</p> <p>(b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the six required elements (see 19.704), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan which incorporates the six required elements within the time allotted, the bidder shall be ineligible for award. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the contracting officer may find the bidder nonresponsible.</p> <p>(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the six elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small and small disadvantaged</p>	<p>* * * * *</p> <p>(b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the six required elements (see 19.704), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan which incorporates the six required elements within the time allotted, the bidder shall be ineligible for award. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contracting officer may find the bidder nonresponsible.</p> <p>(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the six elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small, small disadvantaged, and</p>

subcontractors to the maximum practicable extent. Particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program ~~for Small and Small Disadvantaged Business Concerns~~), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small ~~or~~ small disadvantaged businesses.

(d) In determining the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) Evaluate the offeror's past performance in award-ing subcontracts for the same or similar products or services to small ~~and~~ small disadvantaged business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance.

* * * * *

(4) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small ~~and~~ small disadvantaged business concerns in the geographical area where the work will be performed, and the potential contractor's longstanding contractual relationship with its suppliers.

(5) Advise the offeror of available sources of information on potential small ~~and~~ small disadvantaged business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer shall emphasize that the information should be used to develop realistic and acceptable goals.

(6) Obtain advice and recommendations from the SBA procurement center representative (if any) and the agency small ~~and disadvantaged business utilization representative~~.

women-owned small business subcontractors to the maximum practicable extent. Particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small, small disadvantaged **or women-owned small** businesses.

(d) In determining the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) Evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged **and women-owned small** business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance.

* * * * *

(4) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small, small disadvantaged **and women-owned small** business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(5) Advise the offeror of available sources of information on potential small, small disadvantaged **and women-owned small** business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer shall emphasize that the information should be used to develop realistic and acceptable goals.

(6) Obtain advice and recommendations from the SBA procurement center representative (if any) and the agency small business **specialist**.
[FAC 90-32]

19.705-7 Liquidated damages.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Maximum practicable utilization of small and small disadvantaged business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor.</p> <p>* * * * *</p> <p>(d) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort. For example, notwithstanding a contractor's diligent effort to identify and solicit offers from small business and small disadvantaged business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor's goals. However, when considered in the context of the contractor's total effort in accordance with its plan, the following may be considered as indicia of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small business or small disadvantaged business concerns; a failure to designate a company official to administer the subcontracting program; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan.</p> <p>* * * * *</p> <p>(f) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in the contract entitled Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer of the agency that originally approved the plan will exercise the functions of the contracting officer under this subsection on behalf of all agencies that awarded contracts covered by that commercial products plan.</p> <p>* * * * *</p>	<p>(a) Maximum practicable utilization of small, small disadvantaged and women-owned small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor.</p> <p>* * * * *</p> <p>(d) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort. For example, notwithstanding a contractor's diligent effort to identify and solicit offers from small, small disadvantaged and women-owned small business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor's goals. However, when considered in the context of the contractor's total effort in accordance with its plan, the following may be considered as indicia of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small, small disadvantaged or woman-owned small business concerns; a failure to designate a company official to administer the subcontracting program; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan.</p> <p>* * * * *</p> <p>(f) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in the contract entitled Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the contracting officer of the agency that originally approved the plan will exercise the functions of the contracting officer under this subsection on behalf of all agencies that awarded contracts covered by that commercial products plan. [FAC 90-32]</p> <p>* * * * *</p>

19.706 Responsibilities of the cognizant administrative contracting officer.

FAR as of FAC 90-25

(a) The administrative contracting officer is responsible for assisting in evaluating subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause prescribed in 19.708(b) and any subcontracting plan included in the contract. The contract administration office shall provide the necessary information and advice to support the contracting officer, as appropriate, by furnishing—

* * * * *

(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small ~~and~~ small disadvantaged business concerns;

(3) Information on whether the contractor's efforts to ensure the participation of small ~~and~~ small disadvantaged business concerns are in accordance with its subcontracting plan;

* * * * *

FAR as revised

(a) The administrative contracting officer is responsible for assisting in evaluating subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause prescribed in 19.708(b) and any subcontracting plan included in the contract. The contract administration office shall provide the necessary information and advice to support the contracting officer, as appropriate, by furnishing—

* * * * *

(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small, small disadvantaged **and women-owned small** business concerns;

(3) Information on whether the contractor's efforts to ensure the participation of small, small disadvantaged **and women-owned small** business concerns are in accordance with its subcontracting plan; [FAC 90-32]

* * * * *

19.708 Solicitation provisions and contract clauses.

FAR as of FAC 90-25

(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small ~~Business Concerns and Small Disadvantaged Business Concerns~~, in solicitations and contracts when the contract amount is expected to be over the ~~small purchase limitation in 13.000~~ unless—

* * * * *

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small ~~Business and Small Disadvantaged Business~~ Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small ~~Business Concerns and Small Disadvantaged Business Concerns~~, unless the acquisition has been set aside for ~~small~~

FAR as revised

(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns, in solicitations and contracts when the contract amount is expected to be over the **simplified acquisition threshold in Part 13** unless—

* * * * *

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small, Small Disadvantaged **and Women-Owned Small Business** Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small Business** Concerns,

~~business~~ or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—~~Small Business~~ Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, ~~Small Business and Small Disadvantaged Business~~ Subcontracting Plan, or its Alternate I.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program for ~~Small and Small Disadvantaged Business Concerns~~, when a subcontracting plan is required (see 19.702(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small ~~and~~ disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in (c)(3) below are applicable. The contracting officer may vary the terms of the clause as specified in (c)(2) ~~below~~.

(2) Various approaches may be used in the development of small ~~and~~ small disadvantaged business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see (c)(3) ~~below~~). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in (c)(2) ~~above~~, the contracting officer may include small ~~and~~ small disadvantaged business subcontracting as one of the factors to be considered in determining the award-fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program for ~~Small and Small Disadvantaged Business Concerns~~.

unless the acquisition has been set aside or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, **Small, Small Disadvantaged and Women-Owned Small Business** Subcontracting Plan, or its Alternate I.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required (see 19.702(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small, small disadvantaged **and women-owned small** business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in **paragraph (c)(2) of this section**.

(2) Various approaches may be used in the development of small, small disadvantaged **and women-owned small** business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see paragraph (c)(3) **of this section**). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (c)(2) **of this section**, the contracting officer may include small, small disadvantaged **and women-owned small** business subcontracting as one of the factors to be considered in determining the award-fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program. [FAC 90-32]

19.811-3 Contract clauses.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * *	* * * * *
(d) * * * * *	(d) * * * * *
(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).	(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(c). [FAC 90-32]
* * * * *	* * * * *

SUBPART 19.9—[RESERVED] [FAC 90-32]**SUBPART 19.9—~~CONTRACTING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES~~****19.901—~~Policy.~~**

~~—In response to the need to aid and stimulate women’s business enterprise, Executive Order 12138, May 18, 1979, directs agencies to take appropriate action to facilitate, preserve, and strengthen women’s business enterprise and to ensure full participation by women in the free enterprise system. Appropriate action includes the award of subcontracts under Federal prime contracts.~~

19.902—~~Contract clause.~~

~~—To encourage the use of women-owned small businesses in subcontracting, the contracting officer shall insert the clause at 52.219-13, Utilization of Women-Owned Small Businesses, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation, except—~~

~~—(a) Contracts that, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; or~~

~~—(b) Contracts for personal services.~~

52.219-1 Small Business Program Representations.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
As prescribed in 19.304(a), insert the following provision: SMALL BUSINESS CONCERN REPRESENTATION (FEB 1995)	As prescribed in 19.304(a), insert the following provision: SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 1995) (a)(1) The standard industrial classification (SIC) code for this acquisition is ----- (insert SIC code).

~~(a) Representation.~~ The offeror represents and certifies as part of its offer that it is: ☐ a small business concern, ☐ not a small business concern. [FAC 90-23]

~~(b) Definition.~~ “Small business concern,” as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in this solicitation.

(2) The small business size standard is _____ (insert size standard).

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations. (1) The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.

(c) Definitions. “Small business concern”, as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standard above.

“Small disadvantaged business concern”, as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily busi-

ness controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

“Women-owned small business concern”, as used in this provision, means a small business concern—

(a) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more women.

~~(c)~~ Notice. [Whole section revised by FAC 90-23] * * * * *

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

* * * * *

(d) Notice. * * * * *

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small **or small disadvantaged** business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall— [FAC 90-32]

* * * * *

52.219-2 Equal Low Bids. [Old 52.219-2 now included in 52.219-1. 52.220-1 redesignated and revised by FAC 90-32]

FAR as of FAC 90-25

FAR as revised

52.219-2 Preference for Labor Surplus Area Concerns

As prescribed in 19.304(b), insert the following provision:

~~SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (FEB 1990)~~

~~—(a) Representation. The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.~~

~~—(b) Definitions.~~

~~—“Asian Pacific Americans,” as used in this provision, means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand,~~

As prescribed in 19.304(b), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, below, the LSA in which the costs to be incurred on account of manufacturing or

Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia:

—“Indian tribe,” as used in this provision, means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides:

—“Native Americans,” as used in this provision, means American Indians, Eskimos, Aleuts, and Native Hawaiians:

—“Native Hawaiian Organization,” as used in this provision, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians:

—“Small business concern,” as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

—“Small disadvantaged business concern,” as used in this provision, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

—“Subcontinent Asian Americans,” as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal:

production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified above will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

~~—(c) *Qualified groups.*—The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other individuals found to be qualified by SBA under 13 CFR 124. The offeror shall presume that socially and economically disadvantaged entities also include Indian tribes and Native Hawaiian Organizations.~~

~~(End of provision)~~

52.219-3 [Reserved] [FAC 90-32]

~~52.219-3 Women-Owned Small Business Representation.~~

~~—As prescribed in 19.304(c), insert the following provision in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia:~~

~~WOMEN-OWNED SMALL BUSINESS~~

~~REPRESENTATION (APR 1984)~~

~~—(a) Representation. The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.~~

~~—(b) Definitions.~~

~~—“Small business concern,” as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.~~

~~—“Women-owned,” as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.~~

~~(End of provision)~~

~~(R-FPR Temp. Reg. 48-1978-DEC)~~

52.219-5 [Reserved] [FAC 90-32]

~~52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.~~

~~—As prescribed in 19.508(b) and except for the Department of Defense, insert the following clause:~~

~~NOTICE OF TOTAL SMALL BUSINESS-LABOR~~

~~SURPLUS AREA SET-ASIDE (JAN 1991)~~

~~—(a) Definitions.~~

~~—“Labor surplus area,” as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.~~

~~—“Labor surplus area concern,” as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.~~

~~—“Perform substantially in labor surplus areas,” as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.~~

~~—“Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.~~

—(b) *General.* (1) Offers are solicited from small business concerns that are also labor surplus area concerns. Offers received from concerns that are not small business-labor surplus area concerns shall be considered nonresponsive and will be rejected.

—(2) Any award resulting from this solicitation will be made to a small business-labor surplus area concern.

—(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will take the following actions:

—(i) Perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

—(ii) If the contract exceeds the small purchase limitation, submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

—(A) The dollar amount of the contract.

—(B) Identification of each labor surplus area in which contract (and first-tier subcontract) performance is taking or will take place.

—(C) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (1) the prime Contractor and (2) first-tier subcontractors.

—(D) The total dollar amount attributable to performance in labor surplus areas.

—(2) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

— *Alternate I* (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(2) for subparagraph (c)(2) of the basic clause:

—(c)(2) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

52.219-6 Notice of Total Small Business Set-Aside.

FAR as of FAC 90-25

* * * * *

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause: * * * * *

FAR as revised

* * * * *

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), **delete** paragraph (c). [FAC 90-32]
* * * * *

52.219-7 Notice of Partial Small Business Set-Aside..

FAR as of FAC 90-25

As prescribed in 19.508(d), insert the following clause:
NOTICE OF PARTIAL SMALL BUSINESS SET-
ASIDE (JAN 1994)

(a) *Definitions.*

—“Labor surplus area,” as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.
—“Labor surplus area concern,” as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.
—“Perform substantially in labor surplus areas,” as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.
* * * * *

(b) *General.* * * * * *

(4)(i) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. ~~These concerns fall into two groups:~~
—(A) Group 1—~~Small business concerns that are also labor surplus area concerns.~~
—(B) Group 2—~~Other small business concerns.~~
—(ii) Negotiations will be conducted with the concern in Group 1 that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue; ~~first with concerns in Group 1 and then with concerns in Group 2,~~ until a contract or contracts are awarded for the entire set-aside portion.
* * * * *

(c) *Agreement.* ~~(1) The offeror agrees that, if awarded a contract as a small business labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the offeror is no longer classified as a~~

FAR as revised

As prescribed in 19.508(d), insert the following clause:
NOTICE OF PARTIAL SMALL BUSINESS SET-
ASIDE (OCT 1995) [FAC 90-32]

(a) *Definitions.* [FAC 90-32]

* * * * *

(b) *General.* * * * * *

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion. [FAC 90-32]
* * * * *

(c) *Agreement.* **For the set-aside portion of the acquisition,** a manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico,

labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

—(2) The offeror agrees that, if awarded a contract that exceeds the small purchase limitation, it will submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

—(i) The dollar amount of the contract.

—(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place.

—(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors.

—(iv) The total dollar amount attributable to performance in labor surplus areas.

—(3) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:

—(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts. [FAC 90-32]

(End of clause)

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), **delete paragraph (c).** [FAC 90-32]

52.219-8 Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns.

52.219-8 Utilization of Small ~~Business Concerns and~~ Small Disadvantaged Business Concerns.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>As prescribed in 19.708(a), insert the following clause:</p> <p>UTILIZATION OF SMALL-BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990)</p> <p>(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.</p> <p>* * * * *</p> <p>(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.</p> <p>(End of clause)</p>	<p>As prescribed in 19.708(a), insert the following clause:</p> <p>UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 1995)</p> <p>(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.</p> <p>* * * * *</p> <p>(d) The term "small business concern owned and controlled by women" shall mean a small business concern (i) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (ii) whose management and daily business operations are controlled by one or more women; and,</p> <p>(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women. [FAC 90-32]</p> <p>(End of clause)</p>

52.219-9 Small, Small Disadvantaged **and Women-Owned Small** Business Subcontracting Plan.

52.219-9 Small ~~Business and~~ Small Disadvantaged Business Subcontracting Plan.

FAR as of FAC 90-25

As prescribed in 19.708(b), insert the following clause:

~~SMALL BUSINESS AND SMALL
DISADVANTAGED BUSINESS
SUBCONTRACTING PLAN (FEB 1995)~~

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns ~~and~~ small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

- (i) Total dollars planned to be subcontracted;
- (ii) Total dollars planned to be subcontracted to small business concerns; and
- (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

FAR as revised

As prescribed in 19.708(b), insert the following clause:

**SMALL, SMALL DISADVANTAGED AND
WOMEN-OWNED SMALL BUSINESS
SUBCONTRACTING PLAN (OCT 1995)**

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns **and with women-owned small business concerns**. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, **and women-owned small business concerns** with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns **and women-owned small business concerns** as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

- (i) Total dollars planned to be subcontracted;
- (ii) Total dollars planned to be subcontracted to small business concerns;
- (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; **and**
- (iv) **Total dollars planned to be subcontracted to women-owned small business concerns.**

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns ~~and~~ (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in ~~(+)~~~~above~~.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small ~~and~~ small disadvantaged business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns ~~and~~ (ii) small disadvantaged business concerns.

* * * * *

(8) A description of the efforts the offeror will make to assure that small ~~business concerns and~~ small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small ~~Business Concerns and~~ Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

* * * * *

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) small disadvantaged business concerns **and (iii) women-owned small business concerns.**

(4) A description of the method used to develop the subcontracting goals in **paragraph (d)(1) of this clause.**

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged **and women-owned small** business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) small disadvantaged business concerns, **and (iii) women-owned small business concerns.**

* * * * *

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged **and women-owned small** business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

* * * * *

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small ~~and~~ small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, e.g., PASS guides and other data that identify small ~~and~~ small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small ~~or~~ small disadvantaged business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, ~~and~~ (C) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small ~~and~~ small disadvantaged business sources.

* * * * *

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small ~~business and~~ small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small ~~business and~~ small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged **and women-owned small** business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PASS), guides, and other data that identify small, small disadvantaged **and women-owned small** business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged **or women-owned small** business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) **whether women-owned small business concerns were solicited and if not, why not, and (D)** if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged **and women-owned small** business sources.

* * * * *

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged **and women-owned small** business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small, small disadvantaged **and women-owned small business** subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small ~~business~~ and small disadvantaged business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small ~~and~~ small disadvantaged business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small ~~business~~ or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small ~~Business Concerns~~ and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (~~AUG 1989~~). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged **and women-owned small** business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged **and women-owned small** business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged **or women-owned small** business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (**OCT 1995**). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns **and with women-owned small business concerns**. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, with small disadvantaged business concerns **and with women-owned small business concerns** with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract. [FAC 90-32]

52.219-10 Incentive Subcontracting Program.

~~52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.~~

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>As prescribed in 19.708(c)(1), the contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially as follows when a subcontracting plan is required (see 19.702(a)(2)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the condition in 19.708(c)(3) is applicable. The contracting officer may vary the terms of the clause as specified in 19.708(c)(2).</p> <p>INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1984)</p> <p>(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns and a certain percentage to small disadvantaged business concerns. * * * * *</p>	<p>As prescribed in 19.708(c)(1), insert the following clause:</p> <p>INCENTIVE SUBCONTRACTING PROGRAM (OCT 1995)</p> <p>(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns, a certain percentage to small disadvantaged business concerns and a certain percentage to women-owned small business concerns. [FAC 90-32] * * * * *</p>

52.219-13 [Reserved] [FAC 90-32]

~~52.219-13 Utilization of Women-Owned Small Businesses.~~

~~—As prescribed in 19.902, insert the following clause in solicitations and contracts:~~

~~UTILIZATION OF WOMEN-OWNED SMALL
BUSINESSES (AUG 1986)~~

~~—(a) “Women-owned small businesses,” as used in this clause, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.~~

~~—“Control,” as used in this clause, means exercising the power to make policy decisions.~~

~~—“Operate,” as used in this clause, means being actively involved in the day-to-day management of the business.~~

~~—“Small business concern,” as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.~~

- (b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.
- (c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.
- (d) The Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

(End of clause)

52.219-16 Liquidated Damages—Subcontracting Plan.

52.219-16—Liquidated Damages—Small Business Subcontracting Plan.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
As prescribed in 19.708(b)(2), insert the following clause: LIQUIDATED DAMAGES—SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1989)	As prescribed in 19.708(b)(2), insert the following clause: LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (OCT 1995)
(a) “Failure to make a good faith effort to comply with the subcontracting plan,” as used in this subpart , means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “ Small Business and Small Disadvantaged Business Subcontracting Plan, ” or willful or intentional action to frustrate the plan.	(a) “Failure to make a good faith effort to comply with the subcontracting plan”, as used in this clause , means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “ Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, ” or willful or intentional action to frustrate the plan.
(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled Small and Small Disadvantaged Business Subcontracting Plans , the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal. * * * * *	(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plans , the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal. * * * * *

(d) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small Business and Small Disadvantaged Business Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

* * * * *

(f) Liquidated damages shall be in addition to any other remedies that Government may have.
(End of clause)

(d) With respect to commercial product plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small, Small Disadvantaged **and Women-Owned Small Business** Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

* * * * *

(f) Liquidated damages shall be in addition to any other remedies that **the** Government may have.
(End of clause)

[FAC 90-32]

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

FAR as of FAC 90-25

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Alternate III (NOV 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b), ~~substitute the following paragraph (d)(1) for paragraph (d)(1) of the basic clause:~~

~~—(d)(1) *Agreement.* A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.~~

FAR as revised

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Alternate III (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers **or processors** in the Federal market in accordance with **19.502-2(c)**, **delete** paragraph (d)(1).
[FAC 90-32]

52.219-22 [Reserved] [FAC 90-32]

~~52.219-22 SIC Code and Small Business Size Standard.~~

~~As prescribed in 19.304(d), insert the following provision:~~

~~SIC CODE AND SMALL BUSINESS SIZE STANDARD (JAN 1991)~~

~~(a) The standard industrial classification (SIC) code for this acquisition is _____.~~

~~(b)(1) The small business size standard is _____.~~

~~(2) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.~~

~~(End of provision)~~